

THE PRINCE ALBERT TIMES AND SASKATCHEWAN REVIEW.

VOL. 7.-NO. 8.

PRINCE ALBERT, SASK., FRIDAY, JANUARY 25, 1899.

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Board by the day or week.

The Bar is supplied with the finest brands of Cigars, Beer, Cider and Blackwood Rum. Famous Soft Drinks.

Every attention paid to the travelling public.

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Proprietors.

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Consisting of Gent's, Ladies' and Children's

BOOTS, SHOES, AND SLIPPERS

Of all descriptions and sizes.

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Valuable Town Property

Under and by virtue of the power of sale contained in a certain mortgage, which will be produced at the time of the sale, there will be sold by public auction at the

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In the Town of Prince Albert on

Saturday, the 2nd of March 1899

At the hour of 12 o'clock, noon,

That valuable property known and described as an acre and singular tract certain parcel of land and premises, situated, lying and being in Prince Albert, Saskatchewan in the Northwest Territories, Canada, and being composed of part of a survey of eight in the basic section 10, extending to a part of survey of 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 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AN IMPORTANT DECISION AFFECTING ARREARS OF TAXES.

His Lordship Chief Justice Taylor, of Winnipeg, has rendered the following decision in the case of Schultz vs. Winnipeg, in which the right of the defendants to charge interest on arrears of taxes was disputed. The judgment, it will be seen upholds the plaintiff, and its importance to municipalities cannot be well over-estimated. Messrs. J. Stewart Tupper and F. H. Phippen acted as counsel for the plaintiff and Messrs. Isaac Campbell and Howell for the city. The judgment is as follows:

Schultz vs. Winnipeg.—A bill in this case was filed for an injunction to restrain the sale of lands for arrears of taxes. By consent, the motion to continue the injunction was turned into a motion for decree. There was no dispute as to the facts. The plaintiff was the owner of the lands, and they were advertised to be sold for arrears of taxes. The lands were assessed in the years 1885 & 86 & 87. The amount for which they were advertised to be sold was \$4,149.20, made up of \$3,673.50, the taxes for those three years, with added thereto a rate of three quarters of one per cent. upon the taxes of 1885 & 86 at the end of each month during the year 1887, and also a rate of three quarters of one per cent. upon the taxes of the three years at the beginning of each month during the first nine months of 1888. The additional charges for each month was made by virtue of sec. 626 of the Municipal Act of 1888, 49 Vic., chap. 52, as amended by 50 Vic., chap. 10, sec. 43 and 51 Vic., chap. 27 sec. 43.

The plaintiff's contention was that the Local Legislature had no power to impose such interest, that being a subject by the British North American Act reserved to be dealt with by the Parliament of Canada. Also that there is no authority under the Municipal Act as amended to charge interest upon these taxes for the period after the 18th May 1888.

Interest is one of the matters reserved by sec. 21 of the B.N.A. Act to be dealt with exclusively by the Dominion Parliament, and an act of the Parliament of Canada has been passed, R.S.C. ch. 127, applicable to this province, which fixes the legal rate of interest at 6 per cent., but the defendants urged that the addition made upon overdue taxes is not interest, but an increase by way of damages, and argued that it is quite competent for a Local Legislature to impose damages for non-payment of money, estimating these damages at any rate or percentage upon the debt. His lordship referred to the definition given, in the Imperial dictionary, of interest, and to the fact that in the absence of contract, the measure of damages for the detention of money was the legal rate of interest, which seemed settled by a long current of authority, and his lordship referred to numerous authorities, both English and American on this point.

If, then, the measure of damages which the law allows in the case of the detention of money is interest at the legal rate, the legal rate fixed by the parliament of Canada, which has the exclusive power of fixing the rate, must be the measure of damages in this province, and it is impossible to see how the Local Legislature can change that and fix another and higher rate. Calling the sum or rate to be charged damages, increase or addition, can make no difference. While the usury laws were in force, attempts were constantly being made in this way to evade them, but all such attempts were conspicuous failures. The question now presented for decision has only once before been raised, and that in the Province of Quebec. The 14 and 15 Vic., chap. 128, an act of the old Province of Canada, amending and consolidating the ordinance to incorporate the City of Montreal, by sec. 75 provided that an annual increase of 10 per cent. should accrue upon all unpaid assessments upon real property, and that the property should, after non-payment for five years, of the arrears and increase, be liable to be sold. After Confederation, and in 1874, the 37 Vic., chap. 51, passed by the Legislature repealed the former statute and gave the corporation power to remit, by way of discount for prompt payment, or to charge interest on arrears at 10 per cent. Then in 1878 the 41 Vic., chap. 470, was passed, imposing an increase, addition or penalty, instead of the increase under the previous act. In *Ross vs. Toronto*, 2 Cartwright, 352, the plaintiff succeeded in his contention that such legislation was not within the power of the Local Legislature. Mr. Justice

Johnson in giving his judgment in favor of the plaintiff, said:—"Before the act of 1878 the question would have been whether the Provincial Legislature could in 1874 charge or authorize any creditor to change the legal rate of interest, and now the question is, whether the Provincial Legislature could in 1878 authorize the exaction of an increase, addition or penalty of 10 per cent. for delay in payment of taxes. As to the real nature of the exaction, whether it be called an increase or interest, I must say at once that my judgment and conscience utterly refuses to yield to any attempt at distinction between these two things. The law itself rejects any such distinction. The damage resulting from delay in the payment of money to which the debtor is liable, consists only of interest at the rate legally agreed upon by the parties, or, in the absence of such agreement, at the rate fixed by law. If any other rate is to be fixed by law since Confederation, it must be by the Parliament of Canada. Therefore by whatever name they (that is, the Provincial Legislature) call the exaction in question, it is by law interest and nothing else. The cannot change its nature by changing its name."

In that judgment the learned judge referred to an article in the *Quebec code*, but the law as stated in it is not law peculiar to the Province of Quebec. The argument urged in the present case as to the power of the Local Legislature to fix an amount to be charged, not as interest, but by way of damages or penalties, was urged before Mr. Justice Johnson also. He thus dealt with it:—"It was urged by counsel for the corporation that paragraph 15 of the 22nd section of the B.N.A. Act gave power to the Local Legislature to impose penalties. Here are the express words of the power given: 'The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the province in relation to any matter coming within any of the classes of subjects enumerated in this section.' Surely this never in any that people were to be punished by fine, penalty or imprisonment imposed by a treasurer or other public officer in connection with the detention of money or hearing; therefore it seems to me that the penalty thereby will not do, that the interest authorized by the 37 Vic., chap. 51 was *ultra vires*, that the new section substituting increase or penalty, instead of interest *eo nomine*, is no better."

"The point raised before me having thus been directly decided in favor of the plaintiff's contention, I should follow the decision already given. In doing so I may say that I fully concur in the conclusions arrived at by Mr. Justice Johnson."

"There must be a decree in favor of the plaintiff, granting a perpetual injunction to restrain the sale of the lands in question, which has been advertised. The decree will be with costs."

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CURES Nervous Prostration, Nervous Headache, Neuralgia, Nervous Weakness, Stomach and Liver Diseases, and all affections of the Kidneys.

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ALEX. LOUDOUN,
Sec.-Treas.

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